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DENTSPLY INTERNATIONAL INC
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EXAMINER	
DANIELS, MATTHEW J	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

1. Applicant's arguments filed 1 October 2008 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

(a) The Waknine restorative material is not a wax-like polymerizable material as presently claimed by Applicants. This term refers to a material which is fluid above 40 C and non-fluid below 23 C within 5 minutes. Waknine's restorative material remains flowable when it is left standing at a temperature of 23 C for five minutes, and it does not change to a solid form. The Waknine restorative material has been tested by Dr. Benjamin J. Sun and is described in a Rule 132 declaration.

(b) The Waknine restorative material is cured and hardened in two steps: (a) light radiation to partially cure, and (b) heat curing to completely cure. This is different than Applicant's method where first and second portions of wax-like polyermizable material can be applied to form different portions. After both are applied, they are cured to form a hardened crown. The working and shape stable properties of Applicants' materials are not found in the Waknine reference.

(c) In the Kelly process, the first mass must be cured so that it will maintain shape and position before injection of the second portion of plastic.

(d) Saracsan teaches a urethane acrylate, but it does not have wax-like properties. Comparative example 9 in Volkel (US 6,057,383) demonstrates that blends of polycaprolactone and aliphatic urethane diacrylate resins are thermoplastic materials that display rubber-like viscosity, but are not wax like. In Saracsan, the material is viscous at room temperature and can be poured into glass jars.

(e) The Office Action further rejects the claims over Waknine, Deguchi, and Saracsan. However, the Waknine and Saracsan references have already been discussed. In Deguchi, two tooth portions are completely polymerized in a final molding step., and there is no suggestion of wax-like dental materials.

2. These arguments are not persuasive for the following reasons:

(a) Applicants have not addressed the notable similarities pointed out between the composition of Waknine and the instant composition. A factual basis was set forth on page 3 of the Final Rejection which demonstrated that the ingredients are substantially the same as the instant application, and therefore the same “wax-like” properties would be expected. No basis is offered for the assertion that the materials are not "wax-like" despite the Examiner’s unrebutted position that the materials appear to be the same as the claimed or disclosed materials. Additionally, it is noted that this position and factual basis was first presented in the 13 November 2007 Non-Final Rejection, and therefore the Rule 132 declaration is not believed to be timely at this stage of prosecution. No good and sufficient reasons have been set forth for entry of the declaration at this time.

(b) While partial curing does appear to be used by Waknine, the material is nevertheless still “polyermizable” since further polymerization may be performed. The open-ended "comprising" transitional phrase does not exclude additional steps or ingredients. See MPEP 2111.03. The “working properties” are not recited by the claim, and for the reasons set forth above with respect to (a), the same stability properties are believed to be present in the Waknine material.

(c) While Kelly may teach additional steps, the claim language does not exclude such steps.

(d) It should be noted that the Saracsan reference was provided as an evidentiary reference only. Example 9 in Volkel does not appear to be drawn to the Saracsan reference, and this argument does not consider the factual basis for asserting that the two materials are similar as described on Page 3 of the Final Rejection.

(e) The Deguchi reference teaches merely polymerizing two portions together. Since Waknine's material represents a substitutable material for that of Deguchi, one using the Waknine material in the Deguchi process would achieve a process having the same ingredients and molding steps as the claimed invention. It is noted that both Deguchi and Kelly teach material that appears to be partially polymerized as an intermediate stage. However, the claims and transitional phrases do not exclude any intermediate step disclosed by the Deguchi and Kelly references.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Matthew J. Daniels/
Primary Examiner, Art Unit 1791
10/16/08